REMARKS

Claims 1-12, 15-27, and 30-41 were pending and rejected. In an Office Action dated April 1, 2008, claims 1-12, 15-27, and 30-41 were rejected. Applicants have amended claims 1, 8, 10-12, 16-17, 25-27, and 31-32 in this amendment. Applicants thank the Examiner for examination of the claims pending in this application and address the Examiner's comments below.

Response to Rejection Under 35 USC § 102(e)

In the 1st paragraph of the Office Action, the Examiner rejects claims 1-15, 17-30, 32-39 and 41 under 35 USC § 102(e) as allegedly being anticipated by Hasink et al. (US 2005/0149932). Applicants have amended independent claims 1 and 17. Applicants have also amended the dependent claims to conform to their respective base claims. Applicants respectfully traverse the rejection as applied to the amended claims.

Amended claim 1 recites:

> receiving, by an application executed by an operating system, a plurality of operating
>   parameters **describing a plurality of resources** of a client device;
> **changing a value representing a performance measure of the client device assigned
>   to a usage variable based at least in part on the plurality of the operating
>   parameters** of the client device; and
> correlating by the application a resource usage level of the application with the usage
>   variable, the correlating comprising the application modifying its own execution
>   based at least in part on the change to the value assigned to the usage variable.

(Emphasis Added). The claimed invention relates to regulating resource usage of an application. The claimed method receives, by an application, a plurality of operating parameters describing a plurality of resources of a client device, changes a value of a usage variable based on the plurality of the operating parameters, and correlates a resource usage level of the application based on the usage variable. Thus, the claimed invention can represent a performance measure

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of the client device using a usage variable based on a plurality of operating parameters describing a plurality of resources.

These aspects of the claimed invention are not disclosed or suggested by Hasink. Hasink describes a background process that waits a given amount of time, checks a performance counter (e.g., "current disk queue length"), and determines whether to use a resource based on the value of the counter. *See* Hasink at [0031], [0037]. For example, if the counter value is zero or less than a specified threshold, the background process uses the resource; if the counter value is non-zero or greater than a specified threshold, the background process waits a designated amount of time before checking again. *See id.* at [0031].

Hasink does not "receive…a plurality of operating parameters describing a plurality of resources of a client device" and change "a value representing a performance measure…based at least in part on the plurality of operating parameters" as claimed. The counters of Hasink's Table I, alleged by the Examiner to be the claimed "operating parameters," relate to only a physical disk. Thus, the counters do not describe "a plurality of resources" as claimed. Even if the counters described a plurality of resources, Hasink does not change a value assigned to a usage variable based on the plurality of operating parameters describing a plurality of resources. Instead, Hasink simply uses the individual counters as they are. Thus, Hasink does not disclose a usage variable like that recited by the amended claims and Applicants respectfully submit that independent claim 1 is not anticipated by the cited reference. Claim 17 is not anticipated for at least the same reasons. Claims 2-12, 15, 18-27, 30, 32-39, and 41 variously depend from claims 1 and 17 and are not anticipated for at least the same reasons.

<u>Response to Rejection Under 35 USC § 103 in View of Hasink and Jackson</u>

In the 2nd and 3rd paragraphs of the Office Action, the Examiner rejects claims 16 and 31 under 35 USC § 103(a) as allegedly being unpatentable in view of Hasink and Jackson (US 2002/0152305). This rejection is respectfully traversed.

Claim 16 recites that the plurality of operating parameters comprise a first parameter and a second parameter. The first parameter comprises a speed of the client processor and the second parameter comprises a capacity of the client memory storage device. The Examiner acknowledges that Hasink does not explicitly teach that the operating parameter comprises first and second parameters, but asserts that this aspect is taught by Jackson.

Jackson describes a resource utilization analysis system for analyzing resource utilization in an information management system. At [0294], Jackson describes a list of objectives on which a system configuration can be based, such as capacity objectives. Jackson states that the objectives can use information system characteristics such as storage and computation characteristics. The Examiner asserts that it would have been obvious to include the characteristics of processor speed and storage capacity as operating parameters in Hasink's system.

However, the combination of Hasink and Jackson fails to disclose using the claimed operating parameters in the method of claim 1. Jackson merely provides a laundry list of characteristics around which a system can be designed. Jackson, like Hasink, fails to teach or suggest changing a value assigned to a usage variable based on the plurality of operating parameters describing a plurality of resources as claimed. Accordingly, a person of ordinary skill in the art at the time the claimed invention was made considering the teachings of Hasink and Jackson would not find the claimed invention obvious.

Claim 31 is patentably distinguishable over the cited references for at least the same reasons. Accordingly, it is respectfully submitted that the § 103 rejection is improper and should be withdrawn.

Response to Rejection Under 35 USC § 103 in View of Hasink and Sen

In the 4th paragraph of the Office Action, the Examiner rejects claim 40 under 35 USC § 103(a) as allegedly being unpatentable in view of Hasink and Sen (US 2004/0261081). This rejection is respectfully traversed.

Claim 40 recites that the correlating of claim 1 further comprises:

> examining a table having a column representing the usage variable and a column representing the resource usage level of the application and rows specifying values of the usage variable and resource usage levels;
> identifying a row of the table matching the value assigned to the usage variable; and
> modifying the execution of the application to use a level of resources specified by the identified row.

Thus, the claim recites examining a table having rows and columns, identifying a row of the table matching the value assigned to the usage variable, and modifying the execution of the application to use a level of resources specified by that row.

The Examiner states that Hasink teaches a plurality of usage variables, but does not explicitly teach modifying execution of the application to use a level of resources specified in a table. The Examiner asserts that Sen discloses a table that accounts for resource usage by an application. However, Sen merely discloses using a *hash* table to store tags that include information relating to requesting processes and allocated kernel resources. *See* Sen at [0029]. A hash table lacks the rows and columns recited by claim 40 and it is not clear how the teachings of Sen relate to either claim 40 or the system of Hasink. Indeed, the Examiner's statement of the alleged motivation to combine the references does not explain how or why a hash table would be

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used in Hasink's system. Given that the Examiner acknowledges that Hasink fails to teach the claimed elements, a person of ordinary skill in the art would not find claim 40 obvious in view of a combination of Hasink with Sen and Applicants respectfully submit that the § 103 rejection is improper and should be withdrawn.

Conclusion

For the above reasons, Applicants respectfully submit that the pending claims, as amended, are not taught by the art of record, and request that the application be passed to issue. The Examiner is invited to contact the undersigned by telephone to advance the prosecution of this application.

Respectfully Submitted,
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Date: __June 27, 2008__   By: _____/Brian Hoffman/_____

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